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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/837,901	04/18/2001	Urs Holzle	SUNIP168C2/P2840C2	1037
22434	7590	01/27/2005	EXAMINER	
BEYER WEAVER & THOMAS LLP			NGUYEN BA, HOANG VU A	
P.O. BOX 70250				
OAKLAND, CA 94612-0250			ART UNIT	PAPER NUMBER
			2122	
DATE MAILED: 01/27/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/837,901	HOLZLE ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Hoang-Vu A Nguyen-Ba	2122	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 18 April 2001.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 18 April 2001 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____.   |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>9/4/01</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

## DETAILED ACTION

1. This action is responsive to application filed April 18, 2001.
2. Claim 1 has been examined.

### *Priority*

3. This application is a continuation of U.S. Patent Application No. 09/365,706, now matured as U.S. Patent No. 6,237,141, which is a continuation of U.S. Patent Application No. 08/944,334, now matured as U.S. Patent No. 5,995,754. Therefore, the priority date considered for this application is that of U.S. Patent Application No. 08/944,334, i.e., October 6, 1997.

### *Information Disclosure Statement*

4. The Office acknowledges receipt of the Information Disclosure Statement filed September 04, 2001. It has been placed in the application file and the information referred to therein has been considered.

### *Drawings*

5. The drawings filed April 18, 2001 are accepted by the Examiner.

### *Specification*

6. The Abstract is objected to because it contains more than 150 words. Appropriate correction is required.

*Double Patenting*

7. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v Eagle Mfg Co*, 151 U.S. 186 (1894); *In re Okert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

8. Claim 1 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 1 of prior U.S. Patent No. 5,995,754. This is a double patenting rejection.

Instant claim	Patent claim
A computer-implemented method for processing a computer program during run-time, the program including bye codes, the byte codes being arranged as a plurality of methods, the computer-implemented method comprising:	A computer-implemented method for processing a computer program during run-time, the program including bye codes, the byte codes being arranged as a plurality of methods, the computer-implemented method comprising:
invoking a first method selected from the	invoking a first method selected from the

plurality of methods, wherein invoking the first selected method includes interpreting the first selected method;	plurality of methods, wherein invoking the first selected method includes interpreting the first selected method;
updating an invocation tracker arranged to track a number of invocations of the first selected method;	updating an invocation tracker arranged to track a number of invocations of the first selected method;
determining when the invocation tracker indicates that the number of invocations of the first selected method exceeds a threshold value; and	determining when the invocation tracker indicates that the number of invocations of the first selected method exceeds a threshold value; and
compiling the first selected method when it is determined that the invocation tracker indicates that the number of invocations of the first selected method exceeds the threshold value.	compiling the first selected method when it is determined that the invocation tracker indicates that the number of invocations of the first selected method exceeds the threshold value.

### *Conclusion*

9. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Hoang-Vu A Nguyen-Ba whose telephone number is (571) 272-3701. The examiner can normally be reached on Tuesday-Friday, 6:00 – 16:30.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Tuan Dam can be reached at (571) 272-3695.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**ANTONY NGUYEN-BA  
PRIMARY EXAMINER**

Art Unit 2122

January 21, 2005